

and accredited educational institutions were entitled to one-third of that channel capacity (or three channels total), one channel each should be afforded to accredited K-12 institutions; accredited research universities; and other accredited post-secondary educational institutions. Reservation of channels in this manner is a sensible and easily applied method for ensuring that each significant component of the U.S. educational community be assured DBS access.

E. The Commission Should Adopt Fair Procedures
for Allocating Reserved Channels Among
Educational Institutional Programmers When
Demand Exceeds Available Supply

There may be instances where an accredited educational institution requests access to channel capacity reserved for its category and such capacity is filled. There also may be conflicting demands for channels where DBS operators first make Section 25 channels available pursuant to the Commission's rules. In such cases, the following procedures should be employed.²

If an accredited educational institution's request for access cannot be accommodated on the specific channels allocated

² The procedures proposed herein are intended to be utilized to resolve conflicting demands by accredited educational institutions for channel capacity solely within that block of channels reserved exclusively for such educational institutions. The Commission may choose to adopt similar or different procedures to resolve conflicting channel demands within those blocks of channels reserved for noncommercial educational programmers other than accredited educational institutions.

for that type of educational institution, the institution should have the right to utilize unused channel capacity reserved for any other category of accredited educational institution. If there is no such unused capacity, the institution should have access to any unused channel capacity reserved for any other category of national educational programming supplier. In order to maximize available reserved channel capacity, the Commission should also preclude the use of reserved capacity by any national educational programming supplier for duplicative programming.

In those cases where the demand for reserved channel capacity by educational institutions exceeds the supply of available reserved channel capacity under these guidelines, the Commission should create an accredited educational institutions committee for the establishment of procedures to allocate reserved channel capacity among accredited educational institutions. The committee would be comprised of members of the formal educational community in the United States and would establish cooperative procedures for the allocation of channel capacity in cases of conflicting demand among accredited educational institutions. In order to ensure that the committee is comprised of a cross-section of the educational community, each category of accredited educational institution guaranteed access to DBS reserved channels (accredited K-12, accredited research universities and other accredited post-secondary

institutions), from a range of geographic locations across the country, should be represented.

The Commission should not create a single committee to establish rules for allocating channels where demand exceeds supply for all categories of noncommercial educational programmers. Because noncommercial educational programmers comprise very disparate groups with diverse agendas, funding sources and programming, such a committee would be unwieldy. In contrast, a committee comprised solely of accredited educational institutions, established to allocate channels where demand by any category of accredited educational institution exceeds available channel capacity for that category of accredited educational institution, would be a workable arrangement for resolving disputes within the community of accredited educational institutions.

If DBS operators were to have the ability to resolve conflicting demands for channel capacity by accredited educational institutions, they would presumably opt for programming with the greatest mass appeal. That, of course, would undermine the Congressional objective of maximizing diversity. It would also constitute a form of editorial control over noncommercial educational programming, which is prohibited by Section 25. See 47 U.S.C. §335(b)(3). Similarly, a first-come, first-served policy would not constructively further the objective of ensuring presentation of a diverse body of noncommercial educational programming.

The Commission should not attempt to impose by regulation specific guidelines for categories of programming to be afforded priority status. Such an approach potentially would implicate the Commission in difficult (and possibly prohibited) value judgments about the relative merits of different programming. It would also be problematic for the Commission, in advance of the fact, to envision the multitude of programmers who might seek access and attempt to address their conflicting objectives by regulatory caveat.

The committee proposed herein, which would operate similarly to public access groups in the cable PEG channel context, would function within parameters specified by the Commission. Such parameters should require at the least that (i) no member of the committee may be affiliated with any DBS operator; (ii) disputes should be resolved through binding arbitration; (iii) preference should be afforded to those accredited educational institutions which are nonprofit entities and those that receive Federal funding in support of their programming; and (iv) the Commission must examine the functioning of the committee at specified intervals to ensure its effectiveness.

CONCLUSION

The Commission should take advantage of the unique opportunity afforded it under Section 25 to promote to the

greatest extent possible the availability of a body of high-quality, diverse noncommercial educational programming to the American public. The following proposals would effectively and fairly promote that objective. The Commission should:

- Require each DBS operator to set aside a block of channels which equal seven percent of its total channel capacity and which are received by at least 75 percent of the system's subscribers;
- Permit noncommercial educational programmers -- at least those that are nonprofit entities and those that receive Federal funding in support of their programming -- to gain access to such channels without payment of any fee to DBS operators;
- Require the reservation of separate, discrete blocks of channel capacity for each of the three categories of noncommercial educational programmers identified in Section 25;
- Guarantee one-third of reserved channel capacity for access by educational institutions;
- Define educational institutions to include only accredited educational institutions and entities comprised exclusively of, or controlled exclusively by, accredited educational institutions;
- Ensure that three discrete categories of accredited educational institutions -- K-12 institutions, research universities and other post-secondary

educational institutions -- have equal access to the reserved channels set aside for accredited educational institutions; and

- ° Appoint an accredited educational institutions committee to establish reasonable procedures for the allocation of Section 25 channels among accredited educational institutions where demand exceeds the number of available Section 25 channels.

Respectfully submitted,

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